CODE OF CONUCT TRIBUNAL: A CLASH OF EXECUTIVE AND JUDICIAL POWERS.

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INRODUCTION

ESTABLISHMENT OF THE CCT

The Code of Conduct Tribunal was set up by **Section 20 of the Code of Conduct Bureau and Tribunal Act, CAP C15, Volume 2**, Laws of the Federation of Nigeria, 2004 (CCBTA) to deal with complaints of corruption by public servants for the breaches of its provisions. Since the establishment of the Code of Conduct Tribunal on the **1st of January, 1991**, trials and conviction of public servants suspected to have committed offences which qualify as acts of official corruption have been few and far between.[1]

Similarly, the **Fifth Schedule, Part I, Paragraph 15 of the Constitution of the Federal Republic of Nigeria, 1999, as altered,** provides that: **"There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons. The Chairman shall be a person who has held or is qualified to hold office as a Judge of a Court of record in Nigeria and shall receive such remuneration as may be prescribed by law."** This is exactly same provision with section 20 of the CCTB Act.

POWERS OF THE CCT

Paragraph 18 of the Constitution specifies the punishment for any contravention. It reads: **"(1) Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this Code it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the National Assembly (2) The punishment which the Code of Conduct Tribunal may**

[1] Meanwhile, it should be noted that the code of Conduct Bureau is established mainly to maintain a high standard of morality in the conduct of government of business and to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability. See Sections 3 and 4 of the Code of Conduct Bureau and Tribunal Act.

impose shall include any of the following: (a) vacation of office or seat in any legislative house, as the case may be; (b) disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office. (3) The sanctions mentioned in sub-paragraph (2) hereof shall be without prejudice to the penalties that may be imposed by any law where the conduct is also a criminal offence."

CCT IS PROVIDED FOR BY BOTH THE CONSTITUTION AND CCTB ACT

The preliminary point to be made is that the Code of Conduct Tribunal is statutory being a creation of the Constitution. The seriousness of the provisions on Code of Conduct for public officers is underscored by the fact that it is incorporated into the **Constitution of the Federal Republic of Nigeria, 1999** (as amended) under the 5th Schedule Part I. There is also, in addition, a special legislation enacted for this by virtue of **Chapter C15 Code of Conduct Bureau and Tribunal Act, No. 1 of 1989 Laws of the Federation of Nigeria, 2004** with commencement date of 1st January 1991 which is an act to provide for the establishment of the Code of Conduct Bureau and Tribunal to deal with complaints of corruption by public servants for the breaches of its provisions.

CCTB ACT CAN ONLY BE AMENDED THROUGH THE CONSTITUTION, NOT BY AN ACT OF THE NASS

Of considerable significance is the fact that the entire code of conduct regime under Nigerian Law is provided for in the Constitution.

The Constitution provides for the Code of Conduct itself, the categories of public officers who are subject to its provisions, the Code of Conduct Bureau (CCTB), which is to enforce compliance with the Code of Conduct, and the Code of Conduct Tribunal (CCT), which is to try cases of infraction of the Code of Conduct. This is both its strength and its weakness. The entrenchment in the Constitution means that it cannot be altered at all as might an ordinary Act of the National Assembly, except as part of the Constitution under section 9 thereof.

CCTB ACT VIOLATES DOCTRINE OF COVERING THE FIELD

This also means that amendments to the provisions establishing the Code of Conduct Bureau and Tribunal is not possible by an Act of the National Assembly without an amendment to the Constitution itself in accordance with section 9 thereof. It is in fact unconstitutional, and a violation of the principle of **covering the field** to repeat constitutional provisions verbatim in another Law of the Legislature. See A.G Abia State V. A.G Federation[2].

Against this background, this lecture will focus on exposing how the Code of Conduct Tribunal constitutes a clash of Executive and Judicial powers.

[2] (2002) 6 NWLR (Pt. 763) 264 SC.

THE CODE OF CONDUCT TRIBUNAL: AN INCURSION INTO JUDICIAL POWERS

WHO EXERCISES JUDICIAL POWERS?

There is a persisting debate on whether the code of conduct tribunal is empowered to exercise judicial powers, which it is always seen exercising. This becomes more worrisome having regards to the fact that going by paragraph 14, page 1 of the third Schedule to the 1999 Constitution. The procedure for appointment of the CCT chairman and members is similar to that of the CJN, Supreme Court and Court of Appeal Justices and Chief Judge and Judges of the Federal High Court.

In deciding whether or not the Code of Conduct Tribunal is empowered to exercise judicial powers, reference must be made to the Constitution which placed the duty of adjudicating matters in the hands of the Judiciary; headed and supervised by the **Chief Justice of Nigeria**.

Section 6 (5) of the grund norm of this country, which is the 1999 Constitution, vests judicial powers on the following courts: (a)The Supreme Court of Nigeria; (b) The Court of Appeal; (c) The Federal High Court; (d) The High Court of the Federal Capital Territory, Abuja; (e) A High Court of a State; (f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja; (g) A Sharia Court of Appeal of a State; (h) The Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) A Customary Court of Appeal of a State.

What the above provision implies, is that the CCT is not a court vested with judicial powers within the scope of the Constitution.

Arguing further, it can rightly be said that officials of the CCT are not Judicial Officers within the scope of **section 318 (1) of the Constitution.**[3] In trying to argue that Officers of the CCT are Judicial Officers, some may fallaciously rely on

[3] Is the Code of Conduct Tribunal really an Inferior Court of Record? By Joseph Onele https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwiu773d4uHjAhX6UBUIHYufA7AQFjACegQIARAB&url=https%3A%2F%2Fwww.ssrn.com%2Fabstract%3D2664797&usg=AOvVaw2aGIE8jK4rLxq z_Dipfk6e. last accessed on 31st July,2019.

Paragraph 15(2) of the Constitution which provides that **"The Chairman shall be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria and shall receive such remuneration as may be prescribed by law".**

As a result of the above provision, there appears to be unusual confusion in certain quarters, as some have misconstrued the fact that the Chairman of the CCT must be a person who has held office as a Judge of a superior court of record in Nigeria or qualified to hold office as a Judge of a superior court of record in Nigeria to mean that the CCT Chairman qualifies as a judicial officer, even when there is express constitutional provision to the contrary[4]. But such argument is inherently fallacious and obnoxious to our understanding of who a judicial officer is.[5]

The fact, is that the intention of the drafters of the Constitution in enacting **paragraph 15(2) of the Fifth Schedule of the Constitution** was for all intents and purposes to appoint an individual to head the CCT who is at par with a Judge of the High Court or Federal High Court, and not necessarily to confer the status of a Judicial Officer on such an individual.[5]

Infact, it would be recalled that the Chief Justice of Nigeria, **Justice Muhammed Mahmud** had, in a letter dated 18 May, 2015, addressed to the CCT Chairman, Hon. Danladi Y. Umar, warned him and other CCT members to **"desist forthwith from addressing (themselves) or being allowed to be addressed as "Justice", save where the Member is a retired Judicial Officer serving on the Code of Conduct Tribunal"**.

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[4]https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=16&cad=rja&uact=8&ved=2ahUKEwiu773d4uHjAhX6UBUIHYufA7AQFjAPegQIBxAB&url=http%3A%2F%2Fwww.odujinrinadefulu.com%2Fcontent%2Ffederalhigh-court-and-code-conduct-tribunal-courts-coordinate-jurisdiction&usg=AOvVaw1cD1HC41WeSvsdlWCX2AUA [5] See further Daniel Elombah, " Saraki Trial, the intrigues : Federal High Court - vs- Code of Conduct Tribunal" , available at http://www.elombah.com/index.php/special - reports/924 saraki - trial - the - intrigues - federal - high - court - vs - code - of - conduct – tribunal.

[5] See further Section 20(2) & (3) of the Code of Conduct Bureau and Tribunal Act, Cap. C15 , Laws of the Federation of Nigeria , 2004 which provide that "The Tribunal shall consist of a chairman and two other members. The Chairman shall be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria and shall receive such remuneration as may be prescribed by law."

THE CCT AS A BAT: CAN THE NJC DISCIPLINE THE CHAIRMAN OF THE CCT?

The confusion about the plenitude of the CCT's powers become exacerbated having regard to the fact that it is not subject to NJC's disciplinary powers and jurisdiction.

Whilst **Paragraph 13 (b) of Part One of the Third Schedule to the Constitution** states that the Federal Judicial Service Commission may recommend to the NJC, the removal from office of a number of judicial officers, including the Chairman and members of the CCT, **Paragraph 21 (a) and (b) of the same Third Schedule** omits the Chairman of the CCT and its members from the list of persons that the NJC should recommend their appointment to the President or exercise disciplinary control over. **Thus, the CCT with its enormous powers to punish for the contravention of the Code of Conduct is not put under the disciplinary oversight and purview of the NJC.**

Section 318 CFRN, also omits the Chairman and members of the Tribunal from the list of judicial officers. Also, the Chairman of the CCT and members do not subscribe to the judicial oath before assumption of office. Thus, the contradiction that a powerful body is not supervised by the NJC, but by the Presidency, executive arm of government. In the circumstances, the removal of the chairman and members of the CCT and members is solely left in the hands of the President acting upon a motion supported by a two-thirds majority of each House of the NASS, praying that such a member be removed for inability to discharge the duties of office, whether arising from misconduct or infirmity of mind or body or for the contravention of the Code of Conduct. It is often said that he who pays the piper dictates its tune.

The CCT thus becomes like the bat that simultaneously claims ownership of both the animal and bird kingdoms. – Undermines **Doctrine of Separation of Powers** – Both Judicial and Executive Powers combined.

PLACE OF LAW IN A SOCIETY

Law is an instrument of justice **(Professor Dean Roscoe Pound's theory**). Law facilitates social engineering through the resolution of societal conflicts.

Nigerians are entitled to equality before the law and equal protection under the law. No one is above the law and no one is to enjoy any advantage or suffer any disadvantage or discrimination simply because of his gender, religion, sex, language, ethnicity, station in life, etc. in the implementation of any law, policy or administrative action. (See section 42 of the 1999 Constitution). **Prof. A. V. Dicey's theory of the Rule of Law** is as valid today as it was in **1885** when he put it forward.

CCT IS NOT A SUPERIOR COURT OF RECORD

It accords with common sense to argue in agreement with the views of former CJN, Mahmud, that in addition to the nine courts listed in section 6(5) of the Constitution, the Constitution only recognizes a Superior Court of record as may be prescribed in an Act of the National Assembly; and a Superior Court of record as may be prescribed in a Law of the House of Assembly of a State. Section 6(3) of the Constitution states: "The courts to which this section relates, established by this constitution specified in subsection 5 (a) to (i) of this section shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a state.".

To this end, it may be rightly argued that for any court created by either the National Assembly or the State House of Assembly to qualify as a "**superior court of record",** such must be expressly stated in the enabling Act or law.

Upon a careful perusal of the relevant provisions of the Code of Conduct Tribunal Act in conjunction with the Constitution, it is clear that the Code of Conduct Tribunal Act has failed to qualify the Code of Conduct Tribunal as a court of superior record.[67]

The Constitution specifically used the word **"prescribed".** Adopting the literal meaning of "prescribe" as provided in **Black's Law Dictionary**[8] which means "to dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)", it may be rightly asserted that the National Assembly, having failed to expressly

[6] Chika Ebuzor, Pulse. n g "Agbakoba faults Code of Conduct Tribunal", available a t http://pulse.ng/politics/saraki - agbakoba - faults - code - of -conduct - tribunal - i d 4 1 8 6 1 9 1 . h t m l a n d accessed on September 21, 2015 at [7] :09pm

[8] Bryan Garner, Black's Law Dictionary, Ninth Edition, Thomas Reuters, the United States

state that the CCT shall be a superior court of record, the CCT does not qualify to be called "a superior court of record" in Nigeria.

NJC AS AN EXAMPLE

For instance, this argument may be further strengthened when one considers the fact that the National Industrial Court (NIC), before its inclusion in the list of superior courts of record in the Constitution, had an express statutory backing, which specifically stated that the NIC shall be a superior court of record.

While **Section 1(3) (a) of the National Industrial Court Act 2006** expressly provides that the NIC shall "be a superior court of record", Section 1(3) (b) of the NIC Act provides that the NIC shall have the powers of a High Court, except as otherwise provided by any enactment.[9] Relying on the foregoing, it may be right to make a recourse to the settled principle of law that the court is bound to give the words of statutes/constitution their literal, grammatical and natural meanings unless doing so it will result in absurdity. Consequently, it can be unequivocally submitted that the Constitution and the CCBTA, having not stated that the CCT shall be a superior court of record, any argument to the contrary is bound to fail.

The CCT was established to be an Administrative Court, a hermaphrodite, independent of control of the Judiciary, exercising jurisdiction over public officers. Only recently, the CCT in the **Justice Onnoghen** case argued that it was not bound by the decisions of the High Court (as they are all Courts of equal jurisdiction), but only by the decisions of the Court of Appeal and Supreme Court.

Though the Tribunal exercises some form of judicial powers, it still remains merely an Administrative body, just like the Legal Practitioners Disciplinary Committee, whose appeals in fact lie directly to the Supreme Court. That does not qualify it as a court of law within the contemplation of section 6 of the 1999 Constitution.

The CCT is subject to judicial review by a superior court such as the High Court or Federal High Court, being an inferior court. In any event, court orders must be obeyed, even if issued by courts of co-ordinate jurisdiction. See **Balonwu v. Obi**

[9] See further J.O. Asein, Introduction to Nigerian Legal System, Ababa Press Ltd, Surelere, Lagos, Nigeria, p.231.

[10] Code and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria (CCBTA).

(2007) 5 NWLR (pt.1028) 488, (CA); Kayode A. & Anor V. Abdulfatai & Ors. (2012) LPELR 7874(CA); Emenike V. Orji & Ors.(2008) LPELR 4103 (CA); Nwawka V. Adikamkwu (2014) LPELR 22927(CA).

Once an appeal has been entered and a courts attention is been drawn to it, it ought to exercise caution by halting further proceedings. See ……

CCT'S APPELLATE JURISDICTION

Proponents of the School of thought that the Code of Conduct Tribunal is a superior Court of record, may also argue that the CCT qualifies as a Superior Court of Record and is a court of coordinate jurisdiction with the High Court or Federal High Court given the fact that the provisions of **Paragraph 18(4) of the Fifth Schedule** of the Constitution provides that **appeals from the CCT lie only to the Court of Appeal**. A fallacious argument given by some of the proponents of this school of thought who have argued, rather erroneously, is that "any dissatisfaction arising from a decision or a ruling of the CCT can only be entertained by the Court of Appeal". Nothing can be farther from the truth than this faulty contention which, when tested and scrutinized will fail to see the light of day.

At this point in time, it is quite apt to seek a clearer understanding of the scope of the right of an appeal from the CCT to the Court of Appeal. An appeal lies as of right only from a decision of the CCT in **only two instances, to wit**:

"(x) as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct Bureau and Tribunal Act (CCBTA)[10]; and
(y) as to the punishment imposed on a public officer found guilty of contravention of the Code of Conduct Bureau and Tribunal Act".[10]

What the foregoing implies is that except **in those two instances** mentioned under the CCBTA and the Schedule to the Constitution, an appeal shall not lie as of right to the Court of Appeal.

It is instructive to note that neither the Fifth Schedule to the Constitution nor the CCBTA provides for instances when an appeal can lie with leave to the Court of

[10] See Section 23(4) of the Code of Conduct and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria and Paragraph 18 (4), Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Appeal.[11][12] A careful look at Paragraph 18(4) and (5) of Part 1 of the Fifth Schedule to the Constitution and Section 23 (4) & (5) of the CCBTA will reveal two things, to wit:

(1) Where the CCT gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the Court of Appeal at the instance of any party to the proceedings; and
(2) Any right of appeal to the Court of Appeal from the decisions of the CCT shall be exercised in accordance with CCBTA and the rules of court for the time being in force, regulating the powers, practice and procedure of the Court of Appeal.

Furthermore, **Paragraph 17(4) of the Part 1 of the Fifth Schedule of the Constitution** stipulates that "[w]here the Code of Conduct Tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the Court of Appeal at the instance of any party to the proceedings."

Relying on the foregoing, it is logical to conclude that a purposive interpretation of the above stated provision is that the right of without leave of the CCT to appeal only lies to the Court of Appeal, where a decision as to whether a person is guilty of a contravention of any the provisions of the Code of Conduct has been reached.

Furthermore, considering the above provision, it will not be wrong to assert that for an appeal to lie as of right from the decision of the CCT to the Court of Appeal, the **CCT must have actually given a final decision** on whether a Public officer charged before it is guilty of the Code of Conduct or not. Hence, where a decision has not been reached whether a public officer is guilty or not, the argument may be put forward that such an appeal filed at the Court of Appeal can only lie by leave of the CCT.

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[11] See Eric Ikhilae, The Nation Onl ine, "Court of Appeal, Federal High Court refuse Saraki"s P r a y e rs t o st o p T ri b u n a l " , available at http://thenationonlineng.net/court - of - appeal - federal high - court - refuse – saraki's - prayers - to - stop - tribunal/ and accessed on 31st July 2019 5 a t 11:46pm; see further Vanguard, September 22,

[12] , "Alleged false declaration of assets: Bukola Saraki must face trial – Appeal Court " , available at http://www.vanguardngr.com/2015/09/alleged - false - declaration - of - assets - bukola - saraki - must face - trial - appeal - court/ and accessed on 31st July 2019.

Therefore, it can be rightly argued that to say that "any dissatisfaction" from the decision of the Code of Conduct Tribunal can only be entertained by the Court of Appeal, is stretching what is provided for in the Constitution. It is surely can be entertained by Supreme Courts with supervisory jurisdiction, such as the High Court and Federal High Court. The fallacy contained in the said argument is best discovered by having recourse to the canon of statutory interpretation.

CCT TOTALLY EXCLUDED FROM PURVIEW OF SUPERIOR COURTS OF RECORD

To further drive home the point that the Code of Conduct Tribunal is an incursion of judicial powers, permit me to take a cursory look once again into the provision of the Constitution. Section 6(1) of the Constitution provides that "[t]he judicial powers of Federation shall be vested in the courts to which this section relates, being courts established for the Federation. More importantly, Section 6(3) of the Constitution expressly provides that the Courts to which Section 6 relates "shall be the only superior courts of record in Nigeria…and shall have all the powers of a superior court of record". Relying on the foregoing provision, it is safe to conclude that a literal construction of Section 6 of the Constitution without more reveals that the Code of Conduct Tribunal is not a Court of Superior Record contemplated under the Nigerian Constitution. This argument may further be buttressed by the settled principle of law which is that the express mention of one or more thing of a particular class excludes others. Notably, one of the cardinal rules of judicial interpretation of statute, including the Constitution, is to exclude what is not stated in statute or Constitution; this rule is encapsulated in the Latin maxim **"expressio unius exclusio alterius"** which means that what is not stated is deemed excluded.

THE JUSTICE WALTER ONNOGHEN CASE REVISITED:

WHY THE BENCH WARRANT ISSUED BY THE CCT WAS WRONG

The Chairman of the CCT had ordered the then Acting-Inspector General of Police, Mohammed Adamu and the Director General, Department of State Services, DSS, Yusuf Magaji, to effect Onnoghen's arrest, based on an ex parte application made by the prosecution on unproven allegations, for non appearance in court.

I had reacted that the bench warrant amounted in my humble view a "trivialization of the judicial process". (see https://www.facebook.com.), for the following reasons:

1. The NJC had taken over the investigation of the CJN as provided for in sections 153,158,291,292(2) and section 21, parts A and B to the 3rd schedule to the 1999 Constitution, as altered.

2. The EFCC had since written a petition against the same NJC, using the same facts and evidence as that before the Code of Conduct Tribunal.

3. The CCT had itself adjourned the then CJN's matter for argument on whether it even had jurisdiction at all to hear the case against the CJN.

4. There were at least four (4) Court orders directing the Code of Conduct Tribunal to halt further proceedings.

5. The then CJN had not yet been physically arraigned before the CCT on the charges filed, such as to give the CCT any jurisdiction over the then CJN.

6. Under the Provisions of the ACJA, a person such as Justice Walter Onnoghen, can even be tried in absentia. He therefore must not have to be humiliated by being bundled to the court for arraignment like a common criminal. So, it was not a question of one being above the law.

7. By virtue of section 8 of the ACJA, every suspect is to be accorded humane treatment, with dignity and no suspect is to be subjected to inhuman and degrading treatment.

8. By virtue of section 3(d) of the Code of Conduct Bureau/Code of Conduct Tribunal Act, the then CJN ought not have been charged at all before the Code of Conduct Tribunal, given his admission of mistaken non full compliance with the declaration of his assets. The section provides that he shall not be charged before the CCT once he admits non-compliance. The

matter simply ends there, as he shall be made to comply by being given fresh forms to fill and make full disclosure. CCT not an ambush.

9. The earlier order made by the CCT that the then CJN shall step aside had already been appealed against to the Court of Appeal and the appeal ought to have been allowed to run its full course, and not rendered nugatory (as it later was, anyway).

In any case, in **Nganjiwa V. FRN**, **(2017) LPELR-43391(CA)**, the same Court of Appeal had held that a serving judicial officer cannot be subjected to a criminal prosecution without first complying with the condition precedent of subjecting such judicial officer to the disciplinary powers and jurisdiction of the National Judicial Council (NJC).

It was very clear to me that the then CJN was simply being mob-lynched by the government and a section of the compromised or uninformed members of the public. I believed he was being harassed, intimidated and deliberately tarred with the paintbrush of shame, all with a view to present a fait accompli as to why he must be removed. Indeed, he was forced out of office through resignation.

THE CCT: AN AFFRONT TO ESTABLISHED PRINCIPLE OF JUDICIAL REVIEW.

One of the conditions for the existence of administrative tribunals within the framework of the Nigerian Constitution is the requirement that the decisions of such tribunals must not be final or conclusive. It is in line with this that the position has long been established, that an administrative tribunal, no matter how highly placed it is; is inferior to the High Court and is always subject to the supervisory jurisdiction of the High Court. According to Awogu J.C.A. in National Electoral Commission (N.E.C) v. Nzeribe[13]:

> **"A tribunal, no matter how highly clothed with power is still a tribunal and so an inferior Court and subject to the supervisory jurisdiction of a superior court of record, such as the High Court of Lagos." Accordingly, proceedings before an administrative or statutory tribunal may be challenged at the High Court on certain grounds. Prominent among these is that the tribunal lacks**

[13] (1991) 5 NWLR (Pt 192)

jurisdiction or is in excess of jurisdiction, denial of natural justice or fair hearing and error of law in the conduct of the proceedings by the tribunal".

In practice over the years however, the decision in **Nzeribe's case** has not been strictly followed. We have had situations where conflicting and confusing decisions have been given by the Code of Conduct Tribunal on one hand and regular superior courts of record on the other hand. This vividly affirms the position that the Code of Conduct Tribunal which is constituted by the President (the Head of the Federal Executive arm of Government), is a clash of **Executive and Judicial powers**.

The way the Code of Conduct Tribunal has been operating in recent times, is quite worrisome and depicts a clear departure from established principles of law with respect to Tribunals and Panels.

For instance, it is settled law that a tribunal or other body with a limited jurisdiction acts ultra vires if it attempts to decide a case falling outside its jurisdiction. Such proceedings will be a nullity and will be set aside by the courts. Therefore, a tribunal must act within the four corners of the statute creating it. Rules of natural justice with its twin pillars of audi altarem partem and nemo judex in causa sua which are inherent in Section 36 of the 1999 Constitution (as amended) must be observed by these tribunals as failure may render their proceedings null and void. This was established in the case of Orugbo v. Una.[14] Also, failure to follow the rules and procedure laid down by the enabling statute or an error of law in the proceedings before a tribunal may be fatal depending on whether the defect is fundamental or not. See also the case of R. v. Minister of Health, ex. parte Yaffe [15]

WHEN TO CHALLENGE PROCEEDINGS OF SUPERIOR TRIBUNALS SUCH AS THE CCT

Proceedings before the tribunals may be challenged by application to the appropriate High Court for judicial review asking for the grant of a specific 'order'. Briefly any of the following orders could be sought:

1. **An order of Certiorari** – removing the proceedings before the tribunal to the High Court for review, and if bad, to be quashed.

[14] (2002) 9-10 S.C. 60 at 69

[15] [1930] 2 K.B. 98.

2. **An order of Prohibition** – preventing the tribunal from exceeding or continuing to exceed its jurisdiction or infringing the rules of natural justice.
3. **Orders of Declaration and Injunction**.
4. Where the challenge is against any of the **fundamental rights** guaranteed by the Constitution, it can also be by way of application for enforcement of fundamental rights at the appropriate High Court under the **Fundamental Rights (Enforcement Procedure) Rules** made pursuant to Section 42 of the 1979 Constitution which is now Section 46 of the 1999 Constitution (as amended).

OUSTER OF COURT'S JURISDICTION: WHAT A COURT CAN DO

It was a common feature of the Decrees by military governments in Nigeria setting up administrative tribunals to contain ouster clauses and make the decisions of these tribunals final and conclusive. This was in an attempt to shield these tribunals from judicial control. However, even in the dark days of military dictatorships, the courts subjected such provisions to rigorous tests and have not hesitated to intervene in appropriate cases. In AG Federation v. Guardian Newspapers Ltd[15], Uwaifor JSC held that:

"In this case even if the two instruments (Decrees No.8 and No.12 of 1994) are effective as Decrees, the Federal High Court ought not to have declined jurisdiction at the stage it did without further inquiry. The ouster of jurisdiction of a Court does not preclude it from exercising jurisdiction to interpret the ouster clause itself or to determine whether or not the action in question comes within the scope of power or authority conferred by the enabling statute".

Also, in Miscellaneous Offences Tribunal v. Okoroafor Ogwuegbu[16] It was observed that:

> "The Courts should not throw in the towel on the mere mention of an ouster provision. The proceedings of the tribunal can be impeached in the High Court of Lagos State as was done in this

[15] (1999) 5 SC (Pt 111) 59 at 213
[16] (2001) 9 – 10 SC 92 at 114

> case, notwithstanding the ouster provision, where the procedure laid down for the commencement and conclusion of proceedings of the tribunal was not complied with. There was disobedience by the tribunal to observe the procedural rule. It is for the Court to determine whether this procedural rule as to commencement and conclusion of proceedings is mandatory, in which case disobedience will render void or voidable what has been done, or as directory, in which case disobedience will be treated as an irregularity not affecting the validity of what has been done."

Whatever the position might have been under military dictatorships, such ouster/finality clauses in relation to tribunals have no place within the framework of the present 1999 Constitution (as amended). According to **Section 4(8) of the 1999 Constitution,** the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of the courts.

CAN THE FEDERAL HIGH COURT EXERCISE POWER OF JUDICIAL REVIEW OVER THE CODE OF CONDUCT TRIBUNAL?

YES.

In **Civil Service Unions v. Minister for the Civil Service [1985] AC 374 at 410,** it was held that judicial review had developed to a stage when without reiterating any analysis of the steps by which the development has come about, one could conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The court called the first ground **"illegality"**; the second it called **"irrationality"**; and the third he called **"procedural impropriety"**. The third ground, "procedural impropriety'' is of utmost interest to this lecture. Procedural impropriety, identified by Lord Diplock is the third of the grounds upon which a decision of a public authority or officer could be susceptible to judicial review.

Lord Diplock wrote:

> **"I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.''**

Thus, the Federal High Court will be well within its inherent jurisdiction to exercise its power of judicial review over a Tribunal such as the CCT, when invited to do so by an aggrieved party, except there is an express statutory or constitutional provision to the contrary. There is none either in the Constitution or the CCB/CCT Act.

It can also be rightly argued that to the extent that the Federal High Court does not intend to review the final decision of the CCT given that the Constitution has already provided that the right of appeal lies to the Court of Appeal in such instance, the Federal High Court will well be within its inherent powers to consider, for instance, the validity of the procedure adopted by the CCT in trying an accused person (as in the Onnoghen case).

The procedural impropriety triggers the judicial review of the court where the statutory procedures and the principles of natural justice have not been complied with. The Federal High Court therefore had jurisdiction and rightly made the orders it made in the **Onnoghen** matter.

CONCLUSION

It is respectfully submitted that:

(1) The Federal High Court, being a superior court of record, is well within its supervisory jurisdiction to exercise judicial review of the proceedings and/or acts of the CCT (which is not a superior court of record but a tribunal), that affects the fundamental rights of a public officer;

(2) An order made by the Federal High Court further to its supervisory powers, ought to not only be honoured, but also respected by the CCT, as anything less would amount to judicial rascality; and

(3) The CCT is an executive body exercising judicial powers. It is not a superior court of record and is therefore subject to the supervisory jurisdiction of all superior courts of record as aptly noted by the learned authors of the **Halsbur's Laws of England**, where it was stated:

> **"The courts have an inherent jurisdiction to review the exercise by public bodies or officers of statutory powers impinging on legally recognized interests. Powers must not be exceeded or abused…The superior courts have a somewhat similar inherent supervisory jurisdiction over inferior courts and tribunals. If such a body has exceeded or acted without jurisdiction, or has failed to act fairly or in accordance with the rules of natural justice…Alternatively, a tribunal may be prohibited from violating the conditions precedent to a valid adjudication before it has made a final determination."**

It is clear from our discussions above, that there seems to be an unhealthy tussle between the **Code of Conduct Tribunal and our regular courts**. At the heart of this tussle or friction is the question as to whether the Code of Conduct Tribunal is a superior court of record with the same jurisdiction as our high courts. This unhealthy tussle became clearly imminent in the trial of Nigeria's immediate past Chief Justice of Nigeria, Hon. Justice Walter Onnoghen, before the Code of Conduct Tribunal.[17] We saw a scenario where Onnoghen's counsel sought an injunction from the Federal High Court of the Federal Capital Territory (FCT) against the Code of Conduct Tribunal and the Chairman of the Code of Conduct Tribunal refusing to abide by the injunction order against it arguing that they were courts of concurrent jurisdiction.

IT IS NOW SETTLED THAT THE CCT IS AN INFERIOR TRIBUNAL

Having established that the Code of Conduct Tribunal is not vested with judicial powers under the Constitution, the question that now begs for an answer is "what powers can the Tribunal exercise?" The Code of Conduct Tribunal was established to be an Administrative Court, independent of control from both the Executive and the Judiciary, exercising jurisdiction over public officers. Recently, the Code of Conduct Tribunal had held erroneously, in Justice **Onnoghen's case** that it was not bound by the decisions of the High Courts or Federal High Court as they are all Courts of Equal Jurisdiction. The Court of Appeal in the case of Justice Walter Onnoghen v. Chairman, CCT & Ors (Appeal No…….)

[17] Dr. Saraki v Federal Republic of Nigeria (SC.852/2015)[2016] NGSC 53 (5 February 2016) (SC.852/2015) [1960] NGSC 1 (04 February 2016)

however rejected this reasoning and held emphatically that the CCT was a mere inferior tribunal, and not a court of superior record envisage by section 6 of the Constitution. This has therefore settled this issue. Henceforth, the CCT must see itself for what it is - a mere Administrative Tribunal restricted to its statutary functions, but subject to the supervisory jurisdiction of superior courts, such as the High Courts, and Federal High Court